



## COURT MARTIAL

**Citation:** *R. v. Brownlee*, 2019 CM 2021

**Date:** 20190829

**Docket:** 201929

Standing Court Martial

Halifax Courtroom Suite 505  
Halifax, Nova Scotia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Sub-Lieutenant A. Brownlee, Offender**

**Before:** Commander S.M. Sukstorf, M.J.

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**Restriction on Publication: By court order, pursuant to section 179 of the *National Defence Act*, the Court directs that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.**

### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Sub-Lieutenant Brownlee pleaded guilty to three charges contrary to section 93 of the *National Defence Act (NDA)*, for behaving in a disgraceful manner. Having accepted and recorded her pleas of guilty with respect to the charges, the Court must now determine and pass sentence on the charges which read as follows:

<b>“FIRST CHARGE</b>	<b>BEHAVED IN A DISGRACEFUL MANNER</b>
Section 93 of the	
<i>National Defence Act</i>	<i>Particulars:</i> In that she, on or about 31 October 2017, at or near Split Croatia, did touch the

genitals of P.F. without consent.

**SECOND CHARGE BEHAVED IN A DISGRACEFUL MANNER**

Section 93 of the  
*National Defence Act*

*Particulars:* In that she, on or about 24 October 2017, at or near Split Croatia, did touch the genitals of G.G. without consent.

**THIRD CHARGE BEHAVED IN A DISGRACEFUL MANNER**

Section 93 of the  
*National Defence Act*

*Particulars:* In that she, on or about 17 November 2017, at or near Souda Bay, Greece, did touch the genitals of G.G. without consent.”

[2] The Statement of Circumstances filed in court reads as follows:

“Statement of Circumstances

*(Queen’s Regulations and Orders for the Canadian Forces,*  
art. 112.51(3))

1. At all material times, the offender, SLt Brownlee, was a member of the Regular Force, Canadian Armed Forces, employed with the Royal Canadian Navy.
2. On or about 24 October 2017, HMCS Charlottetown, then the offender’s unit, was alongside in Split, Croatia.
3. Another member of the ship, G.G., was walking in a passageway close to the Wardroom area. He ran into the offender, a colleague with whom he was friends, whom he believed had consumed some alcohol. Without saying anything, she deliberately grabbed his genitals with one hand for a few seconds. She then left without words.
4. In the following days, G.G. spoke to the offender about the incident and told her that her behaviour was not proper and warned her that she could get in trouble.
5. Despite this discussion, on 17 November 2017, while the ship was alongside in Souda Bay, Greece, she again grabbed G.G. genitals in a passageway in similar circumstances.
6. In the evening of 31 October 2017, alongside in Split, Croatia, around 15 shipmates were taking part in a social event at the ship’s Wardroom, this included P.F. and the offender.

7. At one point during the night, while P.F. stood at the bar, the offender deliberately grabbed the latter's genitals with one hand. When P.F. said "what the fuck!", the offender replied "oh I know you like it", or words to that effect.

8. A few hours later, the offender again grabbed P.F.'s genitals in a similar fashion. He reacted with the same utterance.

9. These behaviours, individually, but also collectively in their repetitiveness and despite the warning, were harmful for the victims and the cohesion of the offender's unit."

### **The joint submission**

[3] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a fine in the amount of \$3,000. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission "unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest". By entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect.

[4] Thus, in exchange for making a plea of guilty, the accused must be assured of a high level of certainty that the court will accept the joint submission. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command as well as the victims, is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel acts exclusively in the accused's best interests, including ensuring that the accused's plea is a voluntary and informed choice, and unequivocally acknowledges the accused's guilt. As members of the legal profession and accountable to their respective law societies, the court relies heavily on their professionalism, honesty and judgement, as well as their duty to the court.

### **The evidence**

[5] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incidents that led to the charges before the Court. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations. The prosecution and defence counsel also provided the Court with judicial precedents.

### **The offender**

[6] Sub-Lieutenant Brownlee is twenty-five years old. She enrolled in the Canadian Armed Forces (CAF) on 9 July 2012. She has served approximately seven years in the CAF as a naval warfare officer. She was promoted to her substantive rank of Lieutenant (N) in May 2019. Aside from the incidents before the Court, she has served her country well and has no conduct sheet or criminal record. She has completed several operational tours and is currently in the possession of the Queen Elizabeth II's Diamond Jubilee Medal, the Non-Article 5 NATO Medal for Service on NATO Operation SEA GARDIAN and the Special Service Medal – NATO.

**The victims**

[7] It takes significant courage for a victim or victims to come forward to his or her chain of command to report conduct that has made him or her feel uncomfortable, and the Court recognizes this.

[8] The prosecution advised the Court that the victims were consulted and advised of their right to provide victim impact statements, to which they declined.

**Purpose, objectives and principles of sentencing**

[9] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect of the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one or more objectives as set out at subsection 203.1(2) of the *NDA*. The prosecution has emphasized that in negotiations, he and defence counsel closely considered the objectives set out therein. On the facts of this case, both prosecution and defence submit the objectives they considered most important are general and specific deterrence as well as denunciation and rehabilitation. I agree with their assessment.

[10] Also under section 203.3 of the *NDA*, in imposing a sentence, the court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender. After hearing the submissions of counsel, the Court highlights the following aggravating factors:

- (a) Rank of the offender. At the time of the incidents, the accused was a sub-lieutenant in the officer corps and the victims were her peers;
- (b) Area of the body touched. There were two victims involved and on three different occasions their genitals were touched by the accused; and
- (c) Lack of self-reflection. On one occasion, the accused was warned that the nature of the touching could get her into trouble. Nonetheless, she did it a second time.

[11] However, the Court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Sub-Lieutenant Brownlee's pleas of guilty for these offences as described in the Statement of Circumstances must be given their full weight. She displayed courage by stepping forward to publicly accept responsibility before her peers, supervisors and subordinates. Her guilty pleas have saved the court, counsel and the unit supporting the court considerable time;
- (b) First-time offender. No conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for Sub-Lieutenant Brownlee; and
- (c) Rehabilitation. The matters before the Court date back to 2017 and in the intervening time, Sub-Lieutenant Brownlee has been promoted. The court must infer that because the chain of command promoted her, they have confidence in her and have deemed her suitable for continued service in the CAF.

### **Parity**

[12] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offences. The prosecution provided me with four cases: *R. v. Grant*, 2017 CM 1016; *R. v. Duvall*, 2018 CM 2027; *R. v. Brunelle*, 2017 CM 4001; *R. v. St-Pierre*, 2016 CM 1020. Defence counsel provided: *R. v. St-Pierre*, 2016 CM 1020; *R. v. Duvall*, 2018 CM 2027; *R. v. Duvall*, 2017 CM 2008; *R. v. Mitchell*, 2018 CM 4020; *R. v. Wesley*, 2010 CM 2014.

[13] In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range for the type of punishment historically awarded for this type of offence.

### **Comments**

[14] Sub-Lieutenant Brownlee's guilty pleas are particularly important because they ensure that this matter was dealt with quickly, she has accepted responsibility, and, more importantly, they ensure that the victims did not have to testify.

[15] Although Sub-Lieutenant Brownlee may never engage in this type of inappropriate conduct within the CAF again, it is absolutely imperative that the rest of the CAF community understand that this type of misconduct will not be tolerated. The military justice system is well designed to address and correct this type of shortcoming. Sub-Lieutenant Brownlee's decision to plead guilty to offences under section 93 for disgraceful conduct is no small matter. As I explained during the plea process, the offence of disgraceful conduct is very serious.

[16] Parliament legislated this offence into the *NDA* to ensure that all military members respect the dignity of those around them, regardless of rank, status or circumstances. The essence of the section 93 offence is to denounce conduct that rises to the level that it is shockingly unacceptable, even where it involves low-level behaviour. Holding the rank of an officer in the CAF is a privilege and with that privilege comes both responsibility and accountability. Hence, any conduct that undermines the trust, confidence and morale of others must be addressed.

### **Conclusion**

[17] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, be viewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the military justice system?

### **Sentence**

[18] Although a fine in the amount of \$3,000 is indeed significant, based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for serious offences. A severe reprimand is intended to send a message to the larger community that any inappropriate conduct, involving even minor touching, is unacceptable and will be punished. It will be a stain that stays on the member's record for the foreseeable future.

[19] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, I am satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

### **FOR THESE REASONS, THE COURT:**

[20] **FINDS** Sub-Lieutenant Brownlee guilty of charges 1, 2 and 3.

[21] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$3,000 payable in monthly installments of \$300, beginning in the October 2019 pay period.

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### **Counsel:**

The Director of Military Prosecutions as represented by Major M.L.P.P. Germain

Lieutenant-Commander B.G. Walden, Defence Counsel Services, Counsel for Sub-Lieutenant A. Brownlee